



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1995

Mr. W. Daniel Vaughn
Law Offices of McLeod, Alexander,
Powel & Apffel
P.O. Box 629
Galveston, Texas 77553

OR95-685

Dear Mr. Vaughn:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32862.

The Board of Trustees of the Galveston Wharves (the "Wharves") received an open records request for a loss prevention survey performed by an insurance company that you contend may be withheld from the public pursuant to sections 552.104 and 552.110 of the Government Code. You inform us that the Wharves is currently engaged in a competitive bidding process for its property insurance.¹

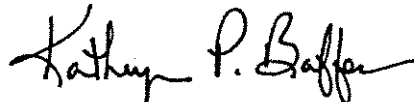
Section 552.104 of the Open Records Act protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). Section 552.104 is designed to protect the interests of governmental bodies and not the interests of private parties submitting information to the government. Open Records Decision No. 592 (1991) at 8. Governmental bodies may withhold this type of information while the governmental officials are in the process of evaluating the proposals and may ask the competitors to clarify their bids. *Cf.* Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982), 184 (1978).

¹You inform us that other insurance companies competing for the Wharves' business have made similar oral requests for this loss prevention survey.

You contend that, since the Wharves is engaged in competitive bidding, the insurance company who did not perform the loss prevention survey may gain an unfair advantage in the bidding process by gaining a "free ride" by receiving information another competitor has worked to put together for its bid. Additionally, you contend that disclosing the survey could harm the Wharves by causing the insurance cost estimates to increase. Because you state that the Wharves has not yet awarded the insurance contract, you may withhold the loss prevention survey at this time pursuant to section 552.104. Release of this information during the time that competitors may clarify, modify, or withdraw their proposals could result in an advantage to the other competitors for the insurance contract or damage the city's ability to obtain truly competitive bids.

Since we have determined that you may withhold the requested information pursuant to section 552.104 of the Government Code we do not need to address your argument that the information requested is excepted by section 552.110. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Government Section

KPB/KHG/rho

Ref: ID# 32862

Enclosures: Submitted document

cc: Mr. Justin R. Curren
Johnson & Higgins
1400 Three Allen Center
Houston, Texas 77002
(w/o enclosures)

Mr. Joseph P. Dombrosky
Counsel
Industrial Risk Insurers
P.O. Box 5010
Hartford, Connecticut 06102-5010
(w/o enclosures)

Industrial Risk Insurers
2435 North Central Expressway, Suite 800
Richardson, Texas 75080-2737
(w/o enclosures)